

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #96-04

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the sales and use tax to purchases of supplies in Tennessee by the [TAXPAYER] for use outside Tennessee.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the commissioner at any time.

Such revocation of modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

The [TAXPAYER] purchases supply items (those used or consumed by the stores such as cleaning supplies, paper towels, door signs, or office forms) from vendors located both within and without Tennessee. With the exception of a few vendors in the [CITY NAME], Tennessee area who use their own delivery trucks, all items are delivered to [THE TAXPAYER]'s distribution warehouse in [A TENNESSEE CITY]. From its distribution warehouse, [THE TAXPAYER] ships supplies to its various retail locations across the entire United States. At the time of shipment, [THE TAXPAYER] accrues and remits use tax to the taxing authority governing the locale where the retail location is located, including Tennessee.

ISSUE

Whether the [TAXPAYER] and/or its related joint ventures may purchase supplies in Tennessee for use outside Tennessee without the payment of Tennessee sales tax.

RULING

The [TAXPAYER] and/or its related joint ventures may not purchase supplies for use outside Tennessee without the payment of Tennessee sales tax. If the [TAXPAYER] and/or its related joint ventures purchase such property without the payment of sales tax through the misuse of a Certificate of Resale then the purchaser will be held liable for the sales tax not paid. Use of a Certificate of Resale to purchase tangible personal property for the purchaser's own use is prohibited and is grounds for the revocation of the dealer's registration.

ANALYSIS

T.C.A. Section 67-6-201 levies a tax at the rate of six percent (6%) of the sales price of each item or article of tangible personal property when sold at retail in this state.

The term "sale" is generally defined as "any transfer of title or possession." T.C.A. Section 67-6-102(24). A sale of tangible personal property occurs in Tennessee if title or possession of the property is transferred to the purchaser in Tennessee. Under the facts presented, purchases from Tennessee vendors which are delivered to the taxpayer's warehouse in [A TENNESSEE CITY] are Tennessee sales subject to sales tax in Tennessee. As stated in the facts, the taxpayer has avoided paying sales tax on these purchases through the use of its Certificate of Resale.

T.C.A. Section 67-6-102 (23) (A) provides as follows:

"Retail sales" or "sale at retail" means a taxable sale of tangible personal property or specifically taxable services to a consumer or to any person for any purpose other than for resale. "Retail sales" or "sales at retail" means

and includes all such transactions as the commissioner, upon investigation, finds to be in lieu of sales. Any sales for resale must, however, be in strict compliance with rules and regulations promulgated by the commissioner. Any dealer making a sale for resale which is not in strict compliance with rules and regulations shall be personally liable for and pay the tax;

Sale and Use Tax Rule 1320-5-1-.68 provides in relevant part as follows:

(3) Certificates of resale may not be used to obtain tangible personal property or taxable services to be used by the purchaser, and not for resale; such use shall be grounds for the Commissioner to revoke the registration certificate of the dealer wrongfully making use of such certificate of resale. In addition to this penalty it is a misdemeanor to misuse the certificate of personal property or taxable services without the payment of the Sales or Use Tax when it is due.

The taxpayer may not use a resale certificate to purchase supply items for its own use. Use of a Certificate of Resale to purchase tangible personal property for the purchaser's own use is prohibited and is grounds for the revocation of the dealer's registration.

The taxpayer argues that it should be allowed to purchase supplies for its own use outside Tennessee tax-exempt pursuant to T.C.A. Section 67-6-211 and *Young Sales Corporation v. Benson*, 450 S.W. 2d 574 (Tenn. 1970). These contentions have been squarely addressed and rejected by the Tennessee Supreme Court. In the case of *Board of Publication of the Methodist Church, Inc. v. Woods*, 609 S.W.2d 501 (Tenn. 1980), the plaintiff similarly argued for an exemption for items purchased in Tennessee for use outside Tennessee. The Court held that the import-for-export exemption from sales tax does not apply when the transfer of title is from a vendor located in Tennessee to a purchaser also located in Tennessee even though the purchaser intends to and does export the merchandise." *Id.* at 504. The Court further specifically distinguished *Young Sales Corp. v. Benson*, 450 S.W.2d 574 (Tenn. 1970), relied on by the taxpayer in this ruling request, noting that in that case there was no allegation that a sale or transfer of possession to a buyer took place in Tennessee. *Id.* The Supreme Court subsequently upheld and reaffirmed these conclusions in *Jack Daniel Distillery v. Jackson*, 740 S.W.2d 413 (Tenn. 1987),

The taxpayer also argues that an exemption is conferred by T.C.A. Section 67-6-102(F)(27) which provides that ". . . temporary storage pending shipping or mailing of tangible personal property to non-residents of Tennessee should not constitute a taxable use in Tennessee." This provision has no application to the facts presented since a sale is made in Tennessee and is clearly subject to sales tax here. To the extent that the taxpayer purchases these items without the payment of tax through the misuse of its resale certificate, it will be held directly liable for the sales tax not paid. *Nasco, Inc. v. Jackson* 748 S.W.2d 193 (Tenn. 1988).

Finally, the taxpayer argues that it should not be held liable for sales tax in Tennessee since it intends to pay use tax in the state of the item's ultimate destination, including Tennessee if the item is assigned to a retail location here. Sales or use tax is due upon the initial exercise of the taxable privilege. In this case, the taxable privilege is initially exercised when the items are purchased in Tennessee for use by the purchaser. Sales tax is therefore due in Tennessee at that time and cannot be delayed in favor of paying a use tax at a later point in time.

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APPROVED: Ruth E. Johnson
Commissioner

DATE: 1-8-96